104

(1)

Supreme Court, U.S.
FILED
08-209 MAR 13 2008
OFFICE OF THE CLERK
William K. Suter, Clerk

No._____

IN THE

Supreme Court of the United States

JOHN HATTON,

Petitioner,

vs.

DANIEL D. GRIGAR,

Respondent.

On Petition For Writ of Certiorari
To The United States Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

JOHN HATTON, PRO SE
P.O. BOX 91
WALLIS, TEXAS 77485
(979) 618-7248

QUESTIONS PRESENTED FOR REVIEW

1. Whether the Court of Appeals exceeded its appellate authority in this case by affirming the dismissal of Petitioner's suit in Trespass to Try Title in the United States District Court.

TABLE OF CONTENTS

Page

Questions Presented for Review..... i

Table of Contents..... ii

Table of Citations..... iii-iv

Opinions Below..... 1

Jurisdiction..... 1

Constitutional And Statutory Provisions Involved..... 2

Statement of the Case..... 3

Summary of Argument..... 6

Reason for Granting Writ..... 10

I. The Fifth Circuit failed to follow the usual course of judicial proceedings and improperly rejected the argument of Petitioner that his complaint did not involve the same cause of action... 10

Conclusion..... 23

APPENDIX (attached)

TABLE OF CITATIONS

Page

Cases Cited:

BONHAM STATE BANK V. BEADLE,
907 S.W. 2d 465, 467 (Tex. 1995).....16

HATTON V. GRIGAR,
66 S.W. 3d 545 (CA 14TH District,
Jan.17, 2002)..... 4,14

MARTIN V. AMERMAN,
133 S.W. 3d 262, 264 (Tex. 2004)..... 17,21,
22

REPUBLIC INS. CO. V. DAVIS,
856 S.W. 2d 158, 164 (Tex. 1993).....16

Statutes Cited:

28 U.S.C.A. Section 1291.....10

42 U.S.C. Section 1981..... 1-3,6
10,15

42 U.S.C. Section 1982.....2,15

42 U.S.C. Section 1983..... 2,3,6,
15

Page

42 U.S.C. Section 2000e.....2,3,6, 10,15

Texas Codes Cited:

Texas Practice & Remedies Code, Section 37.004(a)..... 19

Texas Property Code, Section 22.001..... 19

Rules Cited:

Federal Rules of Appellate Procedure, Rule 10 (a).....1,10

PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

The opinion of the Court of Appeals (Appendix A, infra, 1a–6a) is unreported. The opinion of the District Court (Appendices B-D, infra, 7a–16a) is unreported.

JURISDICTION

The Court of Appeals' Judgment was entered on December 14, 2007 (Appendix A, infra, 1a-6a). Since the Court of Appeals has entered a decision that has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of the supervisory power of this Court, the jurisdiction of this Court is invoked under Rule 10(a) of the Rules of the Supreme Court of the United States (Appendix G, infra, 25a). The jurisdiction of this Court is further invoked under 42 U.S.C. Section 1981 (Appendix H, infra, 26a-

27a) under the color of law for the denial of equal rights and under 42 U.S.C. Section 1983 (Appendix J, infra, 29a-30a) under the color of any statute for the deprivation of rights.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Supremacy Clause of the Constitution provides in relevant part: "[The Laws of the United States...shall be the Supreme Law of the Land... any Thing in the Constitution or Laws of any State to the contrary notwithstanding." United States Constitution, Article VI, Clause 2 (Appendix F, infra, 24a).

The relevant statutes involved in this case are 42 U.S.C. Section 1981, 42 U.S.C. Section 1982, 42 U.S.C. Section 1983, and 42 U.S.C. 2000e which are in the Appendices H-K, infra, 26a-31a.

STATEMENT OF THE CASE

The Petitioner, John Hatton, filed a complaint against the Respondent, Daniel D. Grigar, in Civil Action H-06-3981 in the United States District Court for the Southern District of Texas, Houston Division, on December 15, 2006. The complaint, a Trespass to Try Title suit, is based on 42 U.S.C. Sections 1981 and 1983. The complaint recites that the State District Court violated his property rights to a narrow strip of land (a road) under the color of law pursuant to 42 U.S.C. Section 1983 and discriminated against him because he is a poor outspoken Black man seeking to have the title to this road determined under the complaint in Trespass to Try Title pursuant to 42 U.S.C. 1981 and 42 U.S.C. 2000e.

Prior to the filing of the above referenced lawsuit, Petitioner filed a complaint captioned, The

Court of Appeals for the Fourteenth District of Texas at Houston, Texas, in Hatton v. Grigar, 66 S.W. 3d 545 (CA 14th District, Jan. 17, 2002), which affirmed the Judgment of the 268th District Court of Fort Bend County, Texas, in light of the record before the Court of Appeals that the State District Court had entered no Findings of Fact and Conclusions of Law for the state appellate court to consider on appeal.

The Petitioner filed an Original Petition for Trespass to Try Title in the 240th Judicial District Court of Fort Bend County, Texas, under Cause No. 06-CV-152034, however, this cause of action was transferred without reasonable cause to the 268th Judicial District Court of Fort Bend County, Texas.

On February 14, 2007, the Petitioner filed Plaintiff's Response to Motion to Dismiss (F.R.C.P. 12(b)) for Failure to have Jurisdiction of Subject

Matter. The United States District Court granted Grigar's motion to dismiss finding that Hatton's claims were barred by res judicata and dismissed the complaint of the Petitioner on February 22, 2007. The Clerk entered the Final Dismissal Order on February 26, 2007. The Petitioner filed a timely Motion for Reconsideration on March 6, 2007 and his Amended Motion for Reconsideration on March 7, 2007.

The Petitioner filed his Motion for New Trial on April 11, 2007. The Petitioner filed his Notice of Appeal on April 26, 2007. The United States Court of Appeals for the Fifth Circuit, by decision dated December 14, 2007, found that the same cause of action involved in the state court action (Declaratory Judgment) had been brought in the Plaintiff's Trespass to Try Title suit.

SUMMARY OF ARGUMENT

This case raises important questions relating to a complaint in Trespass to Try Title. The Petitioner filed suit in Trespass to Try Title in the United States District Court on December 15, 2006 because the State Court violated his property rights to a strip of land (a road) under the color of law based upon 42 U.S.C. Section 1983 and because the State Court had discriminated against him because he is a poor outspoken Black man, a citizen born in the United States of America, seeking to have the title to this road determined under Trespass to Try Title pursuant to 42 U.S.C. 1981 and 42 U.S.C. 2000e. Petitioner's Complaint in Trespass to Try Title stated a claim upon which relief could have been granted because the Petitioner pro se, JOHN HATTON, entered upon this road and maintained this road adversely to the

County of Fort Bend, Texas for a period of over twenty-five (25) years and held himself out as the lawful owner of this road which was the strip of land situated in Fort Bend County, Texas.

The Judge of the 268th Judicial District Court of Fort Bend County, Texas, allowed the Respondent, DANIEL D. GRIGAR, to create a cloud on the title of ownership to this road when he allowed the Respondent to rename this road which was known in the community as Hatten Road to GRIGAR ROAD, thus requiring the Petitioner pro se, JOHN HATTON, to file a suit in Trespass to Try Title to clear the title to this road and to determine who held lawful title to this road.

The state court had the opportunity to consider Petitioner's testimony that the road was a private road which he controlled and maintained, but the State District Court took the road without

compensation and awarded the Respondent an easement in the road and proclaimed the road was a public road.

Since a judgment is a matter of an existing right under the Declaratory Judgment Act, an entirely different cause of action is presented under a Trespass to Try Title, which is one of title pertaining to a deed and a limitation title.

Since the Court of Appeals found that the District Court had properly determined that the other three elements for establishing res judicata had been met, the Court of Appeals affirmed the judgment of the United States District Court on the basis that the fourth element for establishing res judicata had been met although the cause of action involved in the Trespass to Try Title was to determine the best title of ownership to the road

rather than a declaration of the existence of a right in the road.

Therefore, the United States District Court and the Court of Appeals for the Fifth Circuit should have granted the Petitioner a hearing on the merits of his complaint in Trespass to Try Title suit because the issue involved in his complaint is one of title to the narrow strip of land in question, not a mere incidental claim for declaratory relief while his suit was pending.

REASONS FOR GRANTING THE WRIT

THE FIFTH CIRCUIT FAILED TO FOLLOW THE USUAL COURSE OF JUDICIAL PROCEEDINGS AND IMPROPERLY REJECTED THE ARGUMENT OF PETITIONER THAT HIS COMPLAINT DID NOT INVOLVE THE SAME CAUSE OF ACTION.

The United States Court of Appeals for the Fifth Circuit has received the appeal of the Petitioner, pro se, and has taken jurisdiction pursuant to 28 U.S.C.A. Section 1291. The Court of Appeals has entered a decision that has so far departed from the accepted and usual course of judicial proceedings, as to call for an exercise of the supervisory power of this Court pursuant to Rule 10 (a) of the Rules of the Supreme Court of the United States. On December 14, 2007,

Higginbotham, Stewart, and Owen, Circuit Judges, filed their decision to Affirm the judgment of the district court dismissing the claims of the Petitioner, John Hatton, pro se, against the Respondent, Daniel D. Grigar.

The Petitioner had brought suit in Trespass to Try Title in the United States District Court because the State Court had violated his property rights to a strip of land (a road) under the color of law based upon 42 U.S.C. Section 1983 and because the State Court discriminated against him because he is a poor outspoken Black man and a Veteran of the Armed Forces of the United States of America, seeking to have the title to this road determined under Trespass to Try Title pursuant to 42 U.S.C. 1981 and 42 U.S.C. 2000e. Petitioner's Complaint in Trespass to Try Title stated a claim upon which relief could have been granted because the

Petitioner, John Hatton, entered upon this road and maintained this road adversely to the County of Fort Bend, Texas for a period of over twenty-five (25) years and held himself out as the owner of this road which is all of the following described real property situated in Fort Bend County, Texas, to wit:

> Being all that tract of land consisting of 0.899 acre in the Shelby, Frazier and McCormick League, Abstract 85, Fort Bend County, Texas and being part of the subdivision of the Hatton Estate according to the plat thereof made by H.J. Walger, County Surveyor, on February 2, 1897 recorded in Volume 1 at Page 60 of the Plat Records of Fort Bend County, Texas and being more particularly described in pages 4 through 10 of the Plaintiff's Trespass to Try Title Suit in the United States District Court.

The real property interest of the Petitioner in this road was further acquired by one Deed of a strip of land thirty (30) feet wide which is described and duly recorded in County Clerk File No.

9601587 of the Official Public Records of Fort Bend County, Texas and by virtue of another Deed of two thirty (30) feet wide strips of land which are described and duly recorded in County Clerk File No. 9707857 of the Official Public Records of Fort Bend County, Texas.

A cloud was placed upon the title of the Petitioner to this road when the Presiding Judge, Brady Elliott, in Cause No. 97-CV- 98376, in the 268th Judicial District Court of Fort Bend County, Texas, allowed the Respondent, Daniel D. Grigar, to survey this road known as Hatten Road in the Community and rename it GRIGAR ROAD in an apparent attempt to acquire some status or right of ownership to this road as though this road belonged to him.

The Court of Appeals for the Fourteenth District of Texas at Houston, Texas, in Hatton v.

Grigar, 66 S.W. 3d 545 (CA 14th District, Jan. 17, 2002), affirmed the Judgment of the 268th District Court of Fort Bend County, Texas, in light of the record before the Court of Appeals that the State District Court had entered no Findings of Fact and Conclusions of Law for the state appellate court to consider on appeal.

The Petitioner filed an Original Petition for Trespass to Try Title in the 240th Judicial Bend County, Texas, under Cause No. 06-CV-152034, however, this cause of action was transferred without reasonable cause to the 268th Judicial District Court of Fort Bend County, Texas to Judge Brady Elliott, who had previously declared to the Petitioner that he had already tried the title of this road when he granted the Declaratory Judgment to Daniel D. Grigar, the Respondent, on June 23, 2000.

The Petitioner is entitled to have his claim of title to this road heard and determined on the merits pursuant to his Complaint and pleadings filed in the United States District Court. The United States District Court had jurisdiction over the subject matter of the Petitioner's Complaint pursuant to 42 U.S.C. Sections 1981, 1982, and 1983, and under 42 U.S.C. 2000e. The Petitioner was not estopped from filing a Trespass to Try Title suit because it is the only remedy by which to clear the title and determine who has the lawful title to this road that is in question.

No Court has tried the title to this road, only a void Declaratory Judgment has been granted to the Respondent awarding him an easement and declaring this road to be a public road on June 23, 2000, because the Presiding Judge, Brady Elliott, in Cause No. 97-CV-98376, in the 268th Judicial

District Court of Fort Bend County, Texas, failed to follow the holding of the Supreme Court of Texas in Bonham State Bank v. Beadle, 907 S.W. 2d 465, 467 (Tex. 1995), which states that the purpose of a declaratory judgment is to establish existing rights, status, or other relationships and the holding of the Texas Supreme Court in Republic Ins. Co. v. Davis, 856 S.W. 2d 158, 164 (Tex. 1993), which held that a declaratory action cannot be used as an affirmative ground to alter rights, status, or relationships.

Since the Respondent, Daniel D. Grigar, had no existing rights, status, or other relationships in regard to the road in question, his Attorney, Don T. Schwartz, filed the Field Notes of a Survey, renaming this road, which had been known in the community as Hatten Road to GRIGAR ROAD, in a fraudulent attempt to claim some interest or right

in this road because the Respondent could not present any deed or title by limitation to this road. The Petitioner herein, John Hatton, was seeking to have the Title to this real property (this road) tried in the United States District Court or sent back to the 240th Judicial District Court of Fort Bend County, Texas with instructions from the United States District Court because a cloud had been placed upon his title by limitations and upon his two deeds to this road pursuant to the holding of the Supreme Court of Texas in Martin v. Amerman, 133 S.W. 3d. 262, 264 (Tex. 2004) when the Field Notes of the Survey were filed of record in the District Court of Fort Bend County, Texas.

Based upon the unlawful taking of this private road that the Petitioner had owned by adverse possession for over twenty-five (25) years pursuant to title by limitation as well as by

ownership that the Petitioner had acquired by conveyances of title under two separate deeds to three thirty (30) feet wide tracts of this road that the Petitioner had acquired from the owners in the Hatten Estate Subdivision, and the conversion of said road to a public road without due process and just compensation, the Petitioner, John Hatton, refiled his pleadings in Trespass to Try Title in the United States District Court on December 15, 2006 when he discovered that his property rights were being violated under the color of law in the State Court because of bias and prejudice to the Petitioner since he was black and was seeking to have the title to this road determined.

The Petitioner argues that his claims in this case in Trespass to Try Title are not barred by res judicata because pursuant to Section 22.001 of the Texas Property Code, "a trespass to try title action

is the method of determining title to lands, tenements, or other real property." That the Petitioner brought before the United States District Court a different cause of action in Trespass to Try Title for the determination of who holds the best legal title to this narrow tract of land, the road that Judge Brady Elliott of the 268th Judicial District Court of Fort Bend County, Texas, had awarded to the Respondent, Daniel D. Grigar, in a Declaratory Judgment on June 23, 2000, with a total disregard for the law of the State of Texas as shown under the Texas Property Code and under Section 37.004(a) of the Texas Practice And Remedies Code which states that the Texas Declaratory Judgments Act provides that " a person interested under a deed...may have determined any question of construction or validity arising under the instrument ....and obtain a declaration of rights,

status, or other legal relations thereunder."

However, Daniel D. Grigar, the Plaintiff in the State Trial Court presented only the Field Notes of a Survey renaming the road that had been known as Hatten Road in the community as GRIGAR ROAD, which Field Notes had been made by Charlie Kalkomey, a Registered Land Surveyor, and filed in the District Court of Fort Bend County, Texas, by Don T. Schwartz, the Attorney of Daniel D. Grigar, purportedly in a fraudulent attempt to claim some interest or right in this road that did not exist as to Daniel D. Grigar because he had no deed or title by limitation to this road that was for the passage of the owners only within the Hatten Estate Subdivision rather than for the passage of the owners in the Jones Subdivision where the Respondent, Daniel D. Grigar, had purchased a tract of land.

The Petitioner argues that the filing of the Field Notes of a Survey in the District Court of Fort Bend County, Texas, renaming this narrow tract of land as GRIGAR ROAD placed a cloud upon his title by limitations and upon his two deeds to this road. See Martin v. Amerman, 133 S.W. 3d 262, 264 (Tex. 2004).

The Petitioner argues that the issue involved here in his Trespass to Try Title suit is one of title and rejects the notion that declaratory relief was available under the Declaratory Judgment Act because the dispute in the Petitioner's cause of action is over title, not an enactment as envisioned by the United States District Court. The Petitioner argues that his claim for declaratory relief was merely incidental to the issue of his claim of title to this narrow tract of land, the road, which was presented by his pleadings in his Trespass to Try

Title suit that was filed in the United States District Court. The Petitioner further argues that pursuant to Martin v. Amerman, 133 S.W. 3d 262, 267 (Tex. 2004), that the trespass-to-try–title statute governs the parties' substantive claims in this case. That the statute expressly provides that it is "the method for determining title to ... real property." The Commissioners of the County of Fort Bend nor the State of Texas ever intervened in this cause of action to make this road a public road through condemnation or other legal due process proceedings to properly compensate the Petitioner, John Hatton, for his lawful interest in this road.

CONCLUSION

The Petitioner is entitled to have his claim of title to the strip of land in question determined pursuant to his Complaint in his Trespass to Try Title pleadings which were properly filed in the United States District Court because it is the only remedy by which to clear a disputed title to land. The Trespass to Try Title statute in the State of Texas is a special proceeding to determine who has the lawful title to the real property that is in question.

Based upon the foregoing, John Hatton, the Petitioner, pro se, respectfully requests that the Petitioner's petition for writ of certiorari be granted.

Respectfully submitted,

JOHN HATTON, PRO SE
P.O. BOX 91
WALLIS, TEXAS 77485
(979) 618-7248

Date: July 19, 2008

No. _____

IN THE

Supreme Court of the United States

JOHN HATTON,

Petitioner,

vs.

DANIEL D. GRIGAR,

Respondent.

On Petition For Writ of Certiorari
To The United States Court of Appeals for the Fifth Circuit

APPENDIX FOR PETITION FOR WRIT OF CERTIORARI

JOHN HATTON, PRO SE
P.O. BOX 91
WALLIS, TEXAS 77485
(979) 618-7248

INDEX TO APPENDICES

Page

APPENDIX A
Opinion of United States Court of Appeal for the Fifth Circuit (December 14, 2007)..... 1a

APPENDIX B
United States District Court's Denial of Plaintiff's Motion For New Trial [Memorandum And Order] (April 12, 2007)... 7a

APPENDIX C
United States District Court's Denial of Motion for Reconsideration and Amended Motion for Reconsideration, and Grant of Motion for Leave To File Plaintiff's Motion and Amended Motion for Reconsideration [Memorandum And Order] (March 29, 2007). 11a

APPENDIX D
Opinion of United States District Court for the Southern District of Texas [Final Dismissal Order] (February 22, 2007)..... 15a

APPENDIX E
United States District Court Memorandum And Order (February 22, 2007) 17a

APPENDIX F
The Supremacy Clause of the Constitution, United States Constitution, Article VI, Clause 2..... 24a

Page

APPENDIX G
Rule 10. Considerations Governing Review on Certiorari..... 25a

APPENDIX H
Equal Rights under the law. 42 U.S.C. Section 1981..... 26a

APPENDIX I
Property rights of citizens. 42 U.S.C. Section 1982..... 28a

APPENDIX J
Civil action for deprivation of rights. 42 U.S.C. Section 1983..... 29a

APPENDIX K
Of 42 U.S.C. Section 2000(e)..... 31a

APPENDIX L
Texas Declaratory Judgments Act, Texas Civil Practice and Remedies Code, Section 37.004(a) of Vernon's Texas Codes Ann.....32a

APPENDIX M
Trespass to Try Title Action, Texas Property Code Section 22.001 of Vernon's Texas Codes Ann.....33a

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED
December 14 2007

Charles R. Fulbruge III
Clerk

No. 07-20318
Summary Calendar

JOHN HATTON,

Plaintiff-

Appellant,

v.

DANIEL D. GRIGAR,

Defendant-

Appellee.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:06-CV-3981

Before HIGGINBOTHAM, STEWART, and OWEN, Circuit Judges.

PER CURIAM:*

Plaintiff Appellant John Hatton, *pro se*, appeals the district court's judgment dismissing his claims against Defendant-Appellee Daniel D. Grigar. For the following reasons, we AFFIRM.

In 1997, after a dispute with Hatton over the use of a certain strip of land, Grigar sought a declaratory judgment that the strip of land was a public road. On June 23, 2000, the 268th Judicial District Court of Fort Bend County, Texas, Entered judgment declaring the land in dispute to

---

Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

be a public road and granting Grigar an easement on the road. On appeal, the Texas Court of Appeals affirmed the trial court's judgment.

On December 15, 2006, Hatton filed the present suit in the United States District Court for the Southern District of Texas, alleging a trespass to try title claim and seeking a restraining order, a temporary injunction, a permanent injunction, and a declaratory judgment that Grigar is barred from using the same road that was at issue in the state court proceedings. The district court dismissed Hatton's suit, finding that his claims were barred by res judicata. Hatton timely appeals.

The res judicata effect of a prior judgment is a question of law that we review de novo. *Davis v. Dallas Area Rapid Transit*, 383 F.3d 309, 313 (5th Cir. 2004).

Res judicata bars the litigation of claims that have been litigated or should have been raised in an earlier suit. *Test Masters Educ. Servs., Inc. v. Singh*, 428 F.3d 559, 571 (5th Cir. 2005). "The test for res judicata has four elements: (1) the parties are identical or in privity; (2) the judgment in the prior action was rendered by a court of competent jurisdiction; (3) the prior action was concluded by a final judgment on the merits; and (4) the same claim or cause of action was involved in both actions." *Id.*

On appeal, Hatton does not dispute the district court's finding that the first three elements for establishing res judicata are met—the parties to the present litigation are identical to the parties in the state court proceeding, the prior action was rendered by a court of competent jurisdiction, and

the prior action was concluded by a final judgment on the merits. Rather, he argues that the district court erred in determining that the fourth element was met because the present case involves a different cause of action than the one determined in the state court proceedings.[1] We disagree. At their core, Hatton's present claims rest on exactly the same issue litigated before the state court: whether the road at issue is a private or public road. Moreover, the state court had the opportunity to consider Hatton's testimony that the road was a private road which he controlled and maintained. Notwithstanding that testimony, the state court found that Hatton did not have any exclusive right to use of the road and that the road was a public road.

[1] In particular, Hatton argues that his trespass to try title claim, unlike the declaratory judgment action before the state court, seeks to determine who has lawful title to the road.

Because we find that the same cause of action was involved in the state court action and we find that the district court properly determined that the other three elements for establishing res judicata are met, we AFFIRM the judgment of the district court.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JOHN HATTON, Plaintiff,	§	
	§	
v.	§	CIVIL ACTION NO.
	§	H-06-3981
DANIEL D. GRIGAR, Defendant.	§	

MEMORANDUM AND ORDER

Plaintiff John Hatton, *pro se*, filed his "Trespass to Try Title and Application for a Restraining Order, Temporary Injunction, and Permanent Injunction" ("Complaint") [Doc. # 1] seeking a "declaratory judgment" that Defendant Daniel Grigar may not enter a certain road that Plaintiff asserts is a private road. *See* Complaint, ¶ 16. Plaintiff also requested an injunction barring Defendant from using the road. By Memorandum

and Order [Doc. # 7] and Final Order of Dismissal [Doc. # 8] entered February 22, 2007, the Court dismissed the case as barred by the preclusive effect of a prior judgment entered June 23, 2000, in the 268th Judicial District Court of Fort Bend County, Texas.

Plaintiff then filed a Motion for Reconsideration [Doc. # 9] and an Amended Motion for Reconsideration [Doc. # 10], which the Court denied by Memorandum and Order [Doc. # 14] entered March 29, 2007. The case is now before the Court on Plaintiff's Motion for New Trial [Doc. # 15] filed pursuant to Rule 59 of the Federal Rules of Civil Procedure.[2]

[2] Plaintiff states that his Motion for New Trial is filed pursuant to Rule 59(a)-(e) of the Federal Rules of Civil Procedure. A motion for new trial must be filed "no later than 10 days after entry of the judgment." FED. R. CIV. P. 59(b). The Final Dismissal Order [Doc. # 8] was entered February 22, 2007, more than 10 business days before the Plaintiff filed his Motion for New Trial. As a result, the Motion for New Trial is untimely. To the extent Plaintiff

Whatever title Plaintiff gives his original pleading, the relief he seeks in this lawsuit is an injunction against Defendant's use of the subject road. The 268th Judicial District Court of Fort Bend County, Texas, has already held that the road is public. Based on the preclusive effect of that state court ruling, the Court dismissed this case. In his prior Motions for Reconsideration and in the Motion for New Trial, Plaintiff presents the same arguments he presented in opposition to Defendant's Motion to Dismiss. These prior rulings were correct, and it is hereby

---

seeks relief under Rule 60(b) of the Federal Rules of Civil Procedure, or seeks Rule 59(e) relief from the denial of his Motions for Reconsideration, the Court denies the Motion for New Trial for the reasons set forth in the February 22, 2007 Memorandum and Order [Doc. # 7], the March 29, 2007 Memorandum and Order [Doc. #14], and herein.

ORDERED that Plaintiff's Motion for New Trial [Doc. # 15] is **DENIED**.

SIGNED at Houston, Texas, this 12th day of April, 2007.

s/s
Nancy F. Atlas
United States District Judge

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JOHN HATTON, Plaintiff,	§	
v.	§	CIVIL ACTION NO. H-06-3981
DANIEL D. GRIGAR, Defendant.	§	

MEMORANDUM AND ORDER

Plaintiff John Hatton, *pro se*, filed this lawsuit seeking a declaratory judgment that a certain road is Plaintiff's private road and an injunction barring Defendant Daniel D. Grigar from using the road. By Memorandum and Order [Doc. # 7] and Final Order of Dismissal [Doc. # 8] entered February 22, 2007, the Court dismissed the case as barred by the *res judicata* effect of a prior

judgment entered June 23, 2000, in the 268th Judicial District Court of Fort Bend County, Texas.

The case is now before the Court on Plaintiff's Motion for Reconsideration [Doc. # 9], Amended Motion for Reconsideration [Doc. # 10], and Motion for Leave to File Plaintiff's Motion and Amended Motion for Reconsideration [Doc. # 11]. Defendant filed a Response [Doc. # 12]. Based on the Court's review of the record and the application of governing legal authorities, the Court grants the Motion for Leave to File, but denies the Motions for Reconsideration.

A motion for reconsideration "calls into questions the correctness of a judgment." *Templet v. HydroChem, Inc.*, 367 F.3d 473, 478 (5th Cir. 2004) (citation omitted). A motion for reconsideration "is not the proper vehicle for

rehashing evidence, legal theories or arguments that could have been offered or raised before the entry of judgment." *Id.* Instead, it merely serves to allow "a party to correct manifest errors of law or fact or to present newly discovered evidence." *Id.*

In his Motions for Reconsideration, Plaintiff presents the same arguments he presented in opposition to Defendant's Motion to Dismiss. Plaintiff admits that a declaratory judgment was issued declaring the road at issue to be a public road. That judgment has *res judicata* effect barring Plaintiff's attempt in this lawsuit to have the road declared to be his private road. The Court's prior decision was correct. As a result, it is hereby

ORDERED that "Plaintiff's Motion for Leave to File Plaintiff's Motion and Amended Motion for Reconsideration" [Doc. # 11] is GRANTED, and

Plaintiff's Motion for Reconsideration [Doc. # 9] and Amended Motion for Reconsideration [Doc. # 10] are DENIED.

SIGNED at Houston, Texas, this 29th day of March, 2007.

s/s
Nancy F. Atlas
United States District Judge

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JOHN HATTON, Plaintiff,	§	
v.	§	CIVIL ACTION NO. H-06-3981
DANIEL D. GRIGAR, Defendant.	§	

FINAL DISMISSAL ORDER

For the reasons set forth in the accompanying Memorandum and Order, it is hereby

ORDERED that Defendant Daniel D. Grigar's Motion to Dismiss [Doc. # 4] is GRANTED and this case is DISMISSED WITH PREJUDICE. This is a final, appealable order.

SIGNED at Houston, Texas, this 22nd day of February, 2007.

s/s

Nancy F. Atlas
United States District Judge

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JOHN HATTON,	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION NO.
	§	H-06-3981
DANIEL D. GRIGAR,	§	
Defendant.	§	

MEMORANDUM AND ORDER

Plaintiff John Hatton, *pro se*, filed this lawsuit seeking a declaratory judgment that a certain road is Plaintiff's private road and an injunction barring Defendant Daniel D. Grigar from using the road.[3] The case is before the Court on Defendant's Motion to Dismiss [Doc. # 4], to Dismiss which Plaintiff filed a timely response

[3] The road at issue runs perpendicular from State Highway 36 toward the Brazos River in Fort Bend County.

[Doc. # 6]. Based on the Court's review of the full record and application of governing legal authorities, the Court grants Defendant's Motion to Dismiss.

Defendant argues that Plaintiff's claims in this case are barred by *res judicata.* "The test for res judicata has four elements: (1) the parties are identical or in privity; (2) the judgment in the prior action was rendered by a court of competent jurisdiction; (3) the prior action was concluded by a final judgment on the merits; and (4) the same claim or cause of action was involved in both actions." *Test Masters Educ. Services, Inc. v. Singh,* 428 F.3d 559, 571 (5th Cir. 2005). If Plaintiff can prevail in this lawsuit only by showing that the prior judgment was wrong, this lawsuit is barred by *res judicata. See id.*

Defendant bases his *res judicata* argument on a prior judgment entered June 23, 2000, in the 268th Judicial District Court of Fort Bend County, Texas. *See* 2000 Judgment, attached to Defendant's Motion to Dismiss. In that case, Grigar sued Hatton seeking a declaration that the road in dispute was a public road. Hatton was represented by counsel and testified during the state court action. The state court announced its findings and entered judgment that the road at issue was a public road and granted to Grigar an easement on the road.[4] The Texas Court of Appeals affirmed, agreeing that the road was a public road.

---

[4] In a later judgment entered December 20, 2002, Hatton was enjoined from obstructing the public road. In September 2003, Hatton was held in contempt and ordered to remove barricades and obstructions from the public road in question. The Texas Court of Appeals dismissed Hatton's appeal as frivolous and sanctioned him and his attorney. *See Hatton v. Grigar*, 2004 WL 583045 (Tex. App. – Houston [14th Dist.] 2004).

See Hatton v. Grigar, 66 S.W.3d 545, 557 (Tex. App. – Houston [14th Dist.] 2002, *rule 53.7 motion denied*).

The parties in the Fort Bend County litigation are identical to the parties in this lawsuit. Plaintiff's argument that Judge Brady Elliott, who entered the 2000 Judgment, became a party when he signed the 2000 Judgment, is without merit. Judge Elliott was not a party to the prior litigation, and Plaintiff did not (and legally cannot) name Judge Elliott as a defendant in this case.[5]

The 2000 Judgment was rendered by the 268th Judicial District Court of Fort Bend County, a court of competent jurisdiction in the county where the subject road is located. The Fort Bend County

[5] Judge Elliott is immune from suit because he acted in his official capacity in issuing the 2000 Judgment.

litigation was concluded by a final judgment on the merits, which was affirmed on appeal.

The same claim was involved in the prior lawsuit as in this case. In this case, Hatton asks the Court to declare the disputed road, previously declared by the Texas court to be a public road, to be a private road. Hatton argues that his suit to try title is not barred because "[n]o Court has tried the title to this road..." *See* Response [Doc. # 6], p.7. The record establishes clearly, however, that Hatton testified before the Fort Bend County court, stating that the road was not a public road but, instead, was a private road that he controlled and maintained. *See Hatton*, 66 S.W.3d at 552. The judge rejected Hatton's position, finding that "Hatton had no right exclusive of any one else to the use of road" and that "the road was used by the

public for many years prior to the acquisition of any rights to the road by Mr. Hatton." *Id.* at 552-53. Thus, the state court found that Hatton did not have title to the public road. The Court of Appeals affirmed the trial court's decision.

There was a final judgment on the merits issued by a court of competent jurisdiction in a prior lawsuit involving the identical parties and the identical claim. The only way Hatton would be able to prevail in this case would be for the Court to find that the 2000 Judgment – affirmed by the Texas Court of Appeals – was incorrect. As a result, Hatton's claims for declaratory and injunctive relief in this case are barred by *res judicata*, and it is hereby

ORDERED that Defendant's Motion to Dismiss

[Doc. # 4] is GRANTED. The Court will issue a separate dismissal order.

SIGNED at Houston, Texas, this 22nd day of February, 2007.

s/s
Nancy F. Atlas
United States District Judge

APPENDIX F

THE SUPREMACY CLAUSE OF THE CONSTITUTION

The Supremacy Clause of the Constitution of the United States provides:

"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

UNITED STATES CONSTITUTION, ARTICLE VI, CLAUSE 2.

APPENDIX G

RULE 10. CONSIDERATIONS GOVERNING REVIEW ON CERTIORARI

A petition for writ of certiorari will be granted only for compelling reasons:

(a) A United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power.

RULES OF THE SUPREME COURT OF THE UNITED STATES, RULE 10(a)

APPENDIX H

EQUAL RIGHTS UNDER THE LAW

(a) Statement of equal rights

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

(b) "Make and enforce contracts" defined

For purposes of this section, the term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits,

privileges, terms, and conditions of the contractual relationship.

(c) **Protection against impairment**

The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

42 U.S.C. SECTION 1981

APPENDIX I

PROPERTY RIGHTS OF CITIZENS

All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

42 U.S.C. SECTION 1982

APPENDIX J

CIVIL ACTION FOR DEPRIVATION OF RIGHTS

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Colombia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated of any Act of Congress applicable exclusively to the District of

Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. SECTION 1983

APPENDIX K

VETERANS' SPECIAL RIGHTS OR PREFERENCE

42 U.S.C. SECTION 2000e-11

APPENDIX L

TEXAS DECLARATORY JUDGMENTS ACT

The Texas Declaratory Judgments Act provides that "a person interested under a deed...may have determined any question of construction or validity arising under the instrument and obtain a declaration of rights, status, or other legal relations thereunder."

TEXAS CIVIL PRACTICE AND REMEDIES CODE, SECTION 37.004(a) OF VERNON'S TEXAS CODES ANN.

APPENDIX M

TRESPASS TO TRY TITLE ACTION

A trespass to try title action is the method of determining title to lands, tenements, or other real property.

TEXAS PROPERTY CODE, SECTION 22.001 OF VERNON'S TEXAS CODES ANN.